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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

11 BEACH ROAD MUSIC LLC, individually and
12 on Behalf of All Others Similarly Situated,

13 vs. Plaintiff,
14 RDIO INC., Defendant.

No.

CLASS ACTION

COMPLAINT FOR:

- 1) VIOLATIONS OF CAL. CIV. CODE § 980(a)(2);**
- 2) UNLAWFUL BUSINESS ACTS AND PRACTICES IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200 *ET SEQ.;***
- 3) COMMON LAW COPYRIGHT INFRINGEMENT UNDER NEW YORK AND FLORIDA COMMON LAW;**
- 4) MISAPPROPRIATION UNDER CALIFORNIA, NEW YORK AND FLORIDA COMMON LAW;**
- 5) CONVERSION UNDER CALIFORNIA, NEW YORK AND FLORIDA COMMON LAW; and**
- 6) DECLARATORY RELIEF UNDER 28 U.S.C. § 2201 *ET SEQ.***

1 **I. NATURE OF THE ACTION**

2 1. This putative class action involves all musical performances that were originally
 3 “fixed” – *i.e.*, recorded – prior to February 15, 1972 (“Pre-1972 Recordings”) that are subject to
 4 California, New York, or Florida law.

5 2. Since at least August of 2010, Rdio Inc. (“Rdio”) has operated a service that
 6 streams music to consumers known as Rdio Music. Rdio Music is available on a consumer’s
 7 internet browser and applications for computers and peripherals (*e.g.*, iPhones, iPods, iPads, and
 8 Android-based devices).

9 3. In order to stream sound recordings on Rdio Music, Rdio has made copies of
 10 these sound recordings on its servers. Rdio Music streams Pre-1972 Recordings that Rdio has not
 11 obtained the recordings’ owners’ permission to stream and that Rdio has not paid royalties or
 12 licensing fees to the recordings’ owners. Yet, Rdio has profited from its streaming of Pre-1972
 13 Recordings in the form of subscription fees collected from its users and advertising revenue it
 14 collects from advertising partners.

15 4. Rdio’s streaming of Pre-1972 Recordings without a license: (a) violates California
 16 Civil Code § 980(a)(2) and California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§
 17 17200, *et seq.*, (“UCL”); (b) constitutes misappropriation and conversion under California, New
 18 York and Florida law; and (c) constitutes infringement of common law copyrights under New
 19 York and Florida law. Defendants’ improper conduct also violates Florida’s law prohibiting
 20 statutory theft (Fla. Stat. §812.014), which is redressable under Florida’s civil theft statute (Fla.
 21 Stat. §772.11); an appropriate pre-filing demand in connection with this claim will be sent to
 22 Defendants. Plaintiff will amend this complaint to add a civil theft claim under Florida law if that
 23 demand is rejected.

24 5. Plaintiff, Beach Road Music LLC (“Beach Road”), is the legal owner to a library
 25 of Pre-1972 Recordings (“Plaintiff’s Recordings”), at least one of which Rdio as reproduced,
 26 distributed, or performed on Rdio Music without payment of royalties or licensing fees to Beach
 27 Road. Plaintiff brings this action on behalf of itself and all other similarly-situated owners of Pre-
 28 1972 Recordings that Rdio has reproduced, distributed, or performed on Rdio Music without

1 paying royalties or licensing fees.

2 **II. THE PARTIES**

3 6. Plaintiff Beach Road is a California-based, international multimedia rights-
 4 management firm formed by Raphael Tisdale and Seth Berg, two former senior executives of a
 5 major record label. Beach Road has its principal offices located in El Segundo, California. It
 6 manages over 3,000 musical copyrights, recorded music rights, name and likeness rights,
 7 trademarks, video assets, and life rights for the estates of Nat King Cole, Peggy Lee, and Bing
 8 Crosby.

9 7. Defendant Rdio is a Delaware corporation that is headquartered in San Francisco,
 10 California. Rdio is a music service that offers over 32 millions songs in 85 countries worldwide.

11 **III. JURISDICTION AND VENUE**

12 8. The claims asserted herein arise under California Civil Code § 980(a)(2),
 13 California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, and California,
 14 New York and Florida common law.

15 9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 based on
 16 diversity of citizenship and the amount in controversy exceeding \$75,000, exclusive of interests
 17 and costs. This Court also has jurisdiction over this action pursuant to the Class Action Fairness
 18 Act, 28 U.S.C. § 1332(d)(2)(A), as the matter in controversy exceeds \$5,000,000, exclusive of
 19 interest and costs, and at least one member of the putative Class is a citizen of a State different
 20 from Defendant. Further, more than two-thirds of the putative Class reside in states other than
 21 the State in which Defendant is domiciled and in which this case is filed, such that any
 22 exceptions to jurisdiction under 28 U.S.C. § 1332(d) do not apply.

23 10. Venue is proper in this District pursuant to 28 U.S.C. § 1331(b) and (c) because
 24 Defendant is domiciled and transacts business within this district and a substantial part of the
 25 events or omissions giving rise to the claims raised in this action occurred in this District.

26 **IV. INTRADISTRICT ASSIGNMENT**

27 11. Under Northern District of California Local Civil Rule 3-2(c), (d), and 3-5(b), this
 28 action is properly assigned to the San Francisco or Oakland Division because the action arises in

1 San Mateo County in that a substantial part of the events or omissions giving rise to the claims
 2 raised in this action occurred in San Mateo County, where Rdio is domiciled. This action is
 3 related to Case No. 15-cv-00311-EDL, which has been filed in the San Francisco Division.

4 **V. FACTUAL ALLEGATIONS**

5 12. The facts in support of this action are based on Plaintiff's review of publicly-
 6 available information. Based on a review of these documents, and as described in greater detail
 7 herein, Plaintiff believes that discovery will result in the production of many more inculpatory
 8 documents within Defendant's sole possession, custody, or control.

9 **A. State Copyright Law Regulates Pre-1972 Recordings**

10 13. Under the 1972 Amendments of the United States Copyright Act, Congress
 11 provided that sound recordings "fixed" (*i.e.*, recorded) before February 15, 1972 are within the
 12 exclusive province of state law. *See* 17 U.S.C. § 301(c). Thus, state common and statutory law
 13 applies to these Pre-1972 Recordings.

14 14. Plaintiff asserts claims under California, New York, and Florida law. Each of
 15 these state's protections for Pre-1972 Recordings is discussed in greater detail below.

16 **1. *California Copyright Law***

17 15. The music industry is synonymous with California. The making and exploitation
 18 of sound recordings in California employs tens of thousands of Californians and contributes
 19 millions upon millions of dollars to the state and local economies. California, in turn, has
 20 provided protections to owners of sound recordings for more than forty years against those who
 21 exploit these sound recordings without license or compensation.

22 16. California common law has protected sound recordings for more than 40 years
 23 and California statutory law has protected sound recordings for more than 30 years. California
 24 first recognized a property right in Pre-1972 Recordings in 1969. In 1982, the California
 25 legislature amended the state's civil code to statutorily provide for the protection of Pre-1972
 26 Recordings as follows:

27 The author of an original work of authorship consisting of a sound
 28 recording initially fixed prior to February 15, 1972, has an

exclusive ownership therein until February 15, 2047, as against all persons except one who independently makes or duplicates another sound recording that does not directly or indirectly recapture the actual sounds fixed in such prior sound recording, but consists entirely of an independent fixation of other sounds, even though such sounds imitate or simulate the sounds contained in the prior sound recording.”

Cal. Civ. Code § 980(a)(2).

17. California law has never delimited, either expressly or impliedly, the scope of the common law or statutory protections afforded to Pre-1972 Recordings. Furthermore, California law does not exclude the right of public performance from the rights of “exclusive ownership” afforded to holders of Pre-1972 Recordings. Numerous recent court decisions in cases involving Pre-1972 Recordings have so held. “Civil Minutes” (Sept. 27, 2014) (Dkt. No.17) in *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, No. 2-13-cv-05693-PSG (RzX) (C.D. Cal); *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, No. 2-13-cv-05693-PSG (RzX), 2014 WL 6670201 (S.D.N.Y. Nov. 14, 2014), *on reconsideration*, 2015 WL 235241 (S.D.N.Y. Jan. 15, 2015); “Court’s Ruling on Submitted Matter” (Oct. 14, 2014) in *Capitol Records LLC v. Sirius XM Radio, Inc.*, No. BC520981 (Cal. Super. Ct., Los Angeles Cnty.).

18. Put simply, California's protections for sound recordings cover nearly any conduct by individual or entities that seek to profit from the exploitation of Pre-1972 Recordings for their own benefit, including unauthorized and unlicensed public performances and reproductions.

19. The broad protections afforded to Pre-1972 Recordings by California law are wholly consistent with California courts' and legislature's recognition that it is important for public policy to protect the owners of Pre-1972 Recordings from unauthorized exploitation of these recordings.

2. *New York Copyright Law*

20. Just as with California law, New York law has not delimited, either explicitly or implicitly, the scope of common law protection for Pre-1972 Recordings, nor have New York courts excluded the right of public performance from the rights of owners in Pre-1972 Recordings.

1 21. Instead, the New York cases explicitly recognize a common law copyright in Pre-
 2 1972 Recordings, whether or not they are published. *Capitol Records, Inc. v. Naxos of America, Inc.*, 4 N.Y.3d 540, 797 N.Y.S.2d 352, 830 N.E.2d 250 (2005); *Capitol Records, LLC v. Harrison Greenwich, LLC*, 44 Misc.2d 202, 984 N.Y.S.2d 274 (2014). As noted in *Harrison*,
 5 common law copyright infringement in New York is treated as being akin to a strict liability
 6 offense.

7 **3. *Florida Copyright Law***

8 22. Courts in Florida have also recognized protectable common law copyrights in
 9 cases involving Pre-1972 Recordings. *CBS, Inc. v. Garrod*, 622 F.Supp. 532 (M.D. Fla. 1985).
 10 *See also SmokeEnders, Inc. v. Smoke No More, Inc.*, 1974 U.S. Dist. LEXIS 6183 (S.D. Fla.
 11 1974) (discussing common law copyrights in another context).

12 **B. Plaintiff's Recordings**

13 23. Some of the world's most popular artists and songs are Pre-1972 Recordings.

14 24. Beach Road acquired master recordings of popular songs owned by Coed
 15 Records, Inc. ("Coed") in April of 2010. Coed was founded in New York City in 1958. Many of
 16 the songs on Coed became hit songs of the day, and between 1958 and 1965, Coed's biggest acts
 17 included the Crests, the Rivieras, the Duprees, the Harptones, Trade Martin and Adam Wade,
 18 among others.

19 25. Among the hits of these artists were the Duprees' *You Belong to Me* and *Why
 20 Don't You Believe Me*; the Crests' *Sixteen Candles*, *The Angels Listened In*, *Pretty Little Angel*,
 21 and *Trouble in Paradise*. Coed's final singles were released in 1965.

22 26. In January 2011, Beach Road released the album *From The Vault: The Coed
 23 Records Lost Master Tapes Volume 1*. Beach Road allows consumers to pay for the downloading
 24 of tracks of the Pre-1972 Recordings it owns or manages through internet portals with whom it
 25 has contractual relationships, such as www.last.fm, owned by CBS Interactive.

26 27. Each of the above mentioned songs is currently available in Rdio's music catalog
 27 for on-demand streaming. On information and belief, Rdio has exploited such songs (and many
 28

1 more) through its Rdio Music without license or payment to the owner(s) of these sound
 2 recordings.

3 **C. Rdio Music**

4 28. Since at least August of 2010, Rdio has operated Rdio Music.

5 29. Rdio streams sound recordings to the United States public, including members of
 6 the public located in California, New York and Florida through Rdio Music. Such recordings
 7 include the Pre-1972 Recordings and Plaintiff's Recordings.

8 30. In order to stream these sound recordings, Rdio has copied (and continues to
 9 copy) sound recordings, including Pre-1972 Recordings and Plaintiff's Recordings, to one or
 10 more of its servers or storage devices. These copies are then distributed to Rdio Music's users.

11 31. Users of Rdio Music can access songs by selecting an album, genre, or by
 12 customizing a station. When users select an album, Rdio Music will stream the songs in that
 13 album. When users select a genre such as "70's Hits" or "60's Hits," Rdio Music will stream
 14 songs appropriate for that genre. Users who choose to "start a station" can select any song from
 15 Rdio Music's catalog to add into a customized playlist in which Rdio Music will stream in
 16 addition to other similar types of songs. The Pre-1972 Recordings identified above that belong to
 17 the Plaintiff are available to stream on Rdio Music.

18 32. Rdio Music is available for myriad devices, including Mac OS and Windows-
 19 based computers and Apple OS and Android-based peripherals (*e.g.*, smart phones and tablets).

20 33. Rdio provides Rdio Music for free as well as on a subscription basis. For \$9.99
 21 per month, subscribers get access to additional features such as no advertisements and the ability
 22 to listen to music offline.

23 34. Rdio streams advertisements to non-subscribing, free users of Rdio Music. Rdio
 24 profits from its free service by collecting advertising revenue from advertising partners.

25 35. In a press announcement, Rdio described its services as follows: "Rdio is the
 26 groundbreaking digital music service that is reinventing the way people discover, play, and share
 27 music. Play what you want, when you want, or turn on a station for a perfect mix of songs.
 28 Listen anywhere—the web, your phone, even offline—and follow friends and artists to see what

1 they're playing."¹ Further, Rdio's webpage markets Rdio as "one of the world's largest licensed
 2 music services [that] offers a catalog of over 32 million songs in 85 countries worldwide. Rdio's
 3 mission is to provide access to every song, on every device, anywhere in the world instantly,
 4 online or offline—tuned to you...Music fans can enjoy Rdio as either a free, personalized
 5 stations-first Internet radio experience or as a full on-demand subscription service."

6 36. Rdio knows that it does not have any license, right, or authority to reproduce,
 7 perform, distribute, or otherwise exploit Pre-1972 Recordings, including Plaintiff's Recordings
 8 on Rdio Music.

9 37. Rdio knows which of the recordings it reproduces, performs, distributes, or
 10 otherwise exploits through Rdio Music are Pre-1972 Recordings.

11 38. Rdio refuses to obtain the necessary permissions to exploit Pre-1972 Recordings
 12 and to compensate the owners of these recordings for the use of their property even though Rdio
 13 (a) makes substantial profits on its exploitation of Pre-1972 Recordings, (b) promotes Rdio
 14 Music as making Pre-1972 Recordings available, and (c) recognizes that it must license and pay
 15 for the performance of post-1972 sound recordings exploited through Rdio Music.

16 **VI. CLASS ACTION ALLEGATIONS**

17 39. This lawsuit is brought on behalf of Plaintiff individually and on behalf of all
 18 those similarly situated under Federal Rules of Civil Procedure 23(a), (b)(2), and (b)(3). Plaintiff
 19 seeks relief on behalf of itself and members of a Class defined as follows:

20
 21 All owners of sound recordings or musical performances that were
 22 initially "fixed" on a physical medium (*i.e.*, recorded) prior to
 23 February 15, 1972 and whose sound recordings were reproduced,
 24 performed, distributed, or otherwise exploited by Rdio in the States
 25 of California, New York and Florida through its Rdio Music and
 26 for which Rdio had not received authorization or license to
 27 reproduce, perform, distribute, or otherwise exploit.

28 40. Excluded from the Class are Defendant; any affiliate, parent, or subsidiary of

27 ¹ *Rdio Acquires Dhingana with Plans to Launch in India*, Rdio Press, available at
 28 <http://www.rdio.com/press/rdio-acquires-dhingana-with-plans-to-launch-in-india-/>.

1 Defendant; any entity in which Defendant has a controlling interest; any officer, director, or
2 employee of Defendant; any successor or assignee of Defendant.

3 41. ***Ascertainability:*** The Class is readily ascertainable and is one for which records
4 should exist.

5 42. ***Numerosity:*** Due to the nature of this case, Plaintiff believes that there are
6 hundreds to thousands of geographically dispersed Class members, the exact number and
7 identities being known to Defendant.

8 43. ***Typicality:*** Plaintiff's claims are typical of the claims of the members of the Class.
9 Plaintiff and the Class have sustained damages arising out of Defendant's exploitation of Pre-
10 1972 Recordings on Rdio Music without authorization or license, as alleged herein. The damages
11 and injuries of each member of the Class were directly caused by Defendant's wrongful conduct
12 in violation of California, New York and Florida law.

13 44. ***Commonality:*** There are questions of law and fact common to the Class,
14 including, but not limited to the following:

15 a. Whether Rdio reproduced, performed, distributed, or otherwise exploited
16 Pre-1972 Recordings on Rdio Music;

17 b. Whether Rdio received authorization from owners of Pre-1972 Recordings
18 to reproduce, perform, distribute, or otherwise exploit the Pre-1972 Recordings on its
19 Rdio Music;

20 c. Whether Rdio paid royalties or licensing fees to owners of Pre-1972
21 Recordings that it reproduces, performs, distributes, or otherwise exploits on Rdio Music;

22 d. Whether Rdio's reproduction, performance, distribution, or other
23 exploitation of Pre-1972 Recordings on its Rdio Music constitutes violation of California,
24 New York and Florida law;

25 e. Whether Rdio's conduct, as alleged herein, caused injury to Plaintiff and
26 the members of the Class;

27 f. The appropriate measure of Classwide damages;

28 g. The proper amount of punitive damages; and

h. The appropriate nature of Classwide injunctive or equitable relief.

2 45. *Adequacy*: Plaintiff will fairly and adequately protect the interests of the members
3 of the Class. Plaintiff's interests are aligned with, and not antagonistic to, those of the other
4 members of the Class, and Plaintiff has retained counsel competent and experienced in the
5 prosecution of class actions to represent it and the other members of the Class.

6 46. ***Predominance***: Questions of law or fact that are common to the members of the
7 Class predominate over any questions affecting only individual members of the Class.

8 47. *Superiority*: A class action is superior to other available methods for the fair and
9 efficient adjudication of this controversy. The prosecution of separate actions by individual
10 members of the Class would impose heavy burdens on the courts and Defendant and would
11 create a risk of inconsistent or varying adjudications of the questions of law and fact common to
12 the Class. A class action, on the other hand, would achieve substantial economies of time, effort,
13 and expense, and would assure uniformity of decision as to persons similarly situated without
14 sacrificing procedural fairness or bringing about other undesirable results. Absent a class action,
15 it would not be feasible for the vast majority of the members of the Class to seek redress for the
16 violations of law herein alleged.

17 | VII. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of California Civil Code § 980(a)(2)

20 48. Plaintiff realleges and incorporates herein by reference, as though fully set forth
21 here, all preceding paragraphs of this Complaint.

22 49. Plaintiff brings this cause of action individually and on behalf of the Class.

23 50. Under California Civil Code § 980(a)(2), Plaintiff and members of the Class
24 possess exclusive ownership interests in and to the Pre-1972 Recordings, including the
25 performances embodied in those recordings.

26 51. Defendant, without authorization or license, reproduced, performed, distributed,
27 or otherwise exploited Pre-1972 Recordings, including Plaintiff's Recordings, through its Rdio
28 Music. As such, Defendant has infringed Plaintiff and the members of the Class's exclusive

ownership interests in the Pre-1972 Recordings in violation of California Civil Code § 980(a)(2).

2 52. As a direct and proximate cause of Defendant's violation of California Civil Code
3 § 980(a)(2), Defendant has received and retained money and value that rightfully belongs to
4 Plaintiff and the members of the Class.

5 53. As a direct and proximate cause of Defendant's violation of California Civil Code
6 § 980(a)(2), Plaintiff and the members of the Class have been damaged in an amount to be
7 determined at trial, but is likely to be tens of millions of dollars.

SECOND CLAIM FOR RELIEF

**Unlawful And Unfair Business Acts and Practices in Violation of
California Business & Professions Code §§ 17200, *et seq.***

11 54. Plaintiff realleges and incorporates herein by reference, as though fully set forth
12 here, all preceding paragraphs of this Complaint.

13 ||| 55. Plaintiff brings this cause of action individually and on behalf of the Class.

14 56. California Business and Professions Code §§ 17200, *et seq.* prohibits acts of
15 unfair competition, which mean and include any unlawful, unfair or fraudulent business
16 practices.

17 57. Fair dealings with artists are matters of great public concern in California and
18 elsewhere. As a society, we value creative expression, and accordingly foster and protect such
19 expression through copyright, trademark and other intellectual property laws. Specifically
20 applicable here is Senate Bill No. 1034, where the California Legislature determined that “the
21 recording industry is an important industry to the State of California,” and that “artistic labor is
22 an important resource to the people of California that is vital to maintaining a healthy and vibrant
23 recording industry.”

24 58. As alleged herein, Defendant, without authorization or license, reproduced,
25 performed, distributed, or otherwise exploited Pre-1972 Recordings, including Plaintiff's
26 Recordings, through its Rdio Music. As such, Defendant has infringed Plaintiff's and the Class
27 members' exclusive ownership interests in the Pre-1972 Recordings in violation of California
28 Civil Code § 980(a)(2).

1 59. As a result, Defendant's uniform policies, acts, omissions, and practices, among
 2 others, violate numerous provisions of California statutory and common law, including, but not
 3 limited to California Civil Code § 980(a)(2). Plaintiff reserves the right to allege other violations
 4 of law that constitute unlawful business acts or practices based upon the above-described
 5 conduct. Such conduct is ongoing and continues to this date.

6 60. Plaintiff and the Class have suffered injury in fact and have lost money as a result
 7 of Defendant's unfair competition and violations of law in that Defendant never paid Plaintiff
 8 and the Class for the exploitation of the Pre-1972 Recordings.

9 61. Defendant's conduct also constitutes "unfair" business acts and practices because
 10 Defendant's practices have caused and are "likely to cause substantial injury" to Plaintiff and
 11 members of the Class which injury is not "reasonably avoidable" by Plaintiff and the Class and is
 12 "not outweighed" by the practices' benefits to Plaintiff and the Class.

13 62. Alternatively, Defendant's conduct constitutes "unfair" business acts and
 14 practices because Defendant's practices are unfair under the legislatively declared policy of
 15 California Civil Code § 980(a)(2).

16 63. Plaintiff and the Class have suffered injury in fact and have lost money as a result
 17 of Defendant's unfair competition and violations of law in that Defendant failed to pay Plaintiff
 18 and the Class for the exploitation of Pre-1972 Recordings.

19 64. Pursuant to California Business & Professions Code §17203, Plaintiff and the
 20 other Class members are therefore entitled to

21 (a) An Order requiring Rdio to cease the acts of unfair competition alleged
 22 herein;

23 (b) An Order enjoining Rdio from failing to account for royalties payable to
 24 Plaintiff and Class members for income derived from such licenses;

25 (c) Full restitution of all monies paid to and retained by Rdio otherwise
 26 payable to Plaintiff and Class members, including, but not limited to, disgorgement pursuant to
 27 California Code of Civil Procedure § 384;

28 (d) Interest at the highest rate allowable by law; and

CLASS ACTION COMPLAINT

1 (e) The payment of Plaintiff's attorneys' fees and costs under, among other
2 provisions of law, Cal. Code Civ. Proc. § 1021.5, or otherwise to the extent permitted by law.

THIRD CLAIM FOR RELIEF

Misappropriation Under California, New York And Florida Law

5 65. Plaintiff realleges and incorporates herein by reference, as though fully set forth
6 here, all preceding paragraphs of this Complaint.

7 66. Plaintiff brings this cause of action individually and on behalf of the Class.

8 67. Under California, New York and Florida law, Plaintiff and the members of the
9 Class possess exclusive ownerships in and to the Pre-1972 Recordings, including the artistic
10 performances embodied in those recordings.

11 68. Plaintiff and the members of the Class (or their predecessors in interest) invested
12 substantial time and money in developing the Pre-1972 Recordings that Defendant reproduced,
13 performed, distributed, or otherwise exploited on Rdio Music.

14 69. Because Defendant does not obtain licenses to the Pre-1972 Recordings, it does
15 not incur any of the costs that a licensee would otherwise be obligated to pay in order to
16 reproduce, perform, distribute, or otherwise exploit these recordings.

17 70. Defendant has and continues to misappropriate for its commercial benefit the Pre-
18 1972 Recordings through its Rdio Music.

19 71. As a direct and proximate cause of Defendant's misappropriation, Defendant has
20 received and retained money and value that rightfully belongs to Plaintiff and the Class.

21 72. As a direct and proximate result of Defendant's violation of California, New York
22 and Florida law, Plaintiff and the Class have been damaged in an amount to be determined at
23 trial, but which is likely to be tens of millions of dollars.

24 73. Defendant acted with oppression, fraud, or malice. Defendant's conduct was
25 undertaken in conscious disregard of Plaintiff and other members of the Class's rights to the Pre-
26 1972 Recordings. Accordingly, Plaintiff and the Class are entitled to punitive damages against
27 Defendant in an amount sufficient to punish and make an example of Defendant and to
28 discourage Defendant and others from engaging in the same or similar conduct in the future.

FOURTH CLAIM FOR RELIEF

Conversion Under California, New York And Florida Law

74. Plaintiff realleges and incorporates herein by reference, as though fully set forth here, all preceding paragraphs of this Complaint.

75. Plaintiff brings this cause of action individually and on behalf of the Class.

76. By reproducing, performing, distributing, or otherwise exploiting the Pre-1972 Recordings on Rdio Music, Defendant has converted for its own use the Plaintiff and the Class's property rights in the Pre-1972 Recordings and has dispossessed Plaintiff and the Class of these rights.

77. As a direct and proximate cause of its conversion, Defendant has received and retained money and value that rightfully belongs to Plaintiff and the Class.

78. As a direct and proximate result of Defendant's violation of California, New York and Florida law, Plaintiff and the Class have been damaged in an amount to be determined at trial, but which is likely to be tens of millions of dollars.

79. Defendant acted with oppression, fraud, or malice. Defendant's conduct was undertaken in conscious disregard of Plaintiff and other members of the Class's rights to the Pre-1972 Recordings. Accordingly, Plaintiff and the Class are entitled to punitive damages against Defendant in an amount sufficient to punish and make an example of Defendant and to discourage Defendant and others from engaging in the same or similar conduct in the future.

FIFTH CLAIM FOR RELIEF

Copyright Infringement Under New York and Florida Law

80. Plaintiff realleges and incorporates herein by reference, as though fully set forth here, all preceding paragraphs of this Complaint.

81. Plaintiff brings this cause of action individually and on behalf of the Class.

82. The Pre-1972 Recordings are unique intellectual property subject to common law copyright protection under New York and Florida law.

83. Plaintiff and Class Members are owners of valid common law copyrights or exclusive licenses in the Pre-1972 Recordings. They hold the exclusive rights to reproduce,

1 perform, distribute, or otherwise exploit the Pre-1972 Recordings, and to license or to refrain
2 from licensing others to do so.

3 84. Plaintiff and the other Class Members have not authorized or licensed the
4 Defendant to reproduce, perform, distribute or otherwise exploit the Pre-1972 Recordings in any
5 manner. Defendant is not, and at all relevant times was not, entitled to or authorized to
6 reproduce, perform, distribute or otherwise exploit the Pre-1972 Recordings.

7 85. Defendant has reproduced, performed, distributed or otherwise exploited
8 unauthorized copies of Pre-1972 recordings, including Plaintiff's recordings. Defendant's acts
9 constitute infringement of Plaintiff's and Class Members' common law copyrights in such
10 recordings and violate their exclusive rights therein.

11 86. While the Plaintiff and Class Members have invested substantial time and money
12 in the development of their Pre-1972 Recordings, the Defendant has infringed their copyrights at
13 little or no cost and without license or authority. The Defendant has copied the Pre-1972
14 Recordings owned by Plaintiff and the Class Members and publicly performed these recordings
15 for subscribers in New York and Florida.

16 87. Defendant has disregarded the Plaintiff's and Class Members' copyrights in and
17 exclusive ownership of their Pre-1972 Recordings. As a direct and proximate consequence of the
18 Defendant's copyright infringements, Plaintiff and the Class Members have been damaged.

19 88. Defendant's conduct causes and continues to cause Plaintiff and the Class
20 Members great and irreparable injury that can neither be fully compensated nor measured
21 entirely in monetary value. The Plaintiff and the Class Members have no adequate remedy at law
22 and are entitled to temporary, preliminary and permanent injunctions that prohibit Defendant
23 from further violating Plaintiff's and the Class Members' rights in and exclusive ownership of
24 their Pre-1972 Recordings in New York and Florida.

SIXTH CLAIM FOR RELIEF

Declaratory Relief Under 28 U.S.C. § 2201 *et seq.*

27 89. Plaintiff realleges and incorporates herein by reference, as though fully set forth
28 here, all preceding paragraphs of this Complaint.

1 90. Plaintiff brings this cause of action individually and on behalf of the Class.

2 91. An actual dispute has arisen between Plaintiff, putative class members and
3 Defendant.

4 92. Plaintiff contends that Defendant's present and future copying, public
5 performance and exploitation of Plaintiff's and putative class members' Pre-1972 recordings
6 without authorization or consent, and without compensation, violate California, New York and
7 Florida law. By its conduct, Defendant disputes this contention.

8 93. Plaintiff requests a judicial declaration of the rights and duties of the parties with
9 regard to this dispute pursuant to 28 U.S.C. § 2201.

10 94. Such a declaration is necessary and proper at this time under all the circumstances
11 in order to resolve present and continuing disputes between the parties, to prevent further
12 violations of Plaintiff's rights and to avoid a multiplicity of future actions.

13 95. Plaintiff also seeks such further necessary of proper relief as permitted pursuant to
14 28 U.S.C. § 2202.

15 **VIII. PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays for judgment and relief against Defendant as follows:

17 A. That the Court certify and maintain this action as a class action and certify the
18 Class defined above;

19 B. That the Court declare Defendant's conduct, as detailed above, violates the law;

20 C. That the Court permanently enjoin Defendant from, without license, reproducing,
21 performing, distributing, or otherwise exploiting via Rdio Music Pre-1972 Recordings;

22 D. That the Court permanently enjoin Defendant from infringing, misappropriating,
23 or converting, directly or indirectly, Plaintiff and the Class's exclusive ownership interests in and
24 to, including the artistic performances embodied therein, Pre-1972 Recordings, including without
25 limitation by directly or indirectly reproducing, performing, distributing, or otherwise exploiting
26 via Rdio Music the Pre-1972 Recordings.

27 E. That the Court enter an order requiring Defendant to pay Plaintiff and the Class
28 compensatory and punitive damages for those claims where such damages are available;

1 F. That the Court enter an order requiring Defendant to pay Plaintiff and the Class
2 restitution so as to restore all funds acquired by means of any act or practice declared by this
3 Court to be unlawful or unfair;

4 G. That the Court enter an order disgorging Defendant of all monies, revenues, and
5 profits obtained by means of any act or practice declared by this Court to be unlawful;

6 H. That the Court enter an order requiring Defendant to pay punitive damages for
7 those claims where such damages are available;

8 I. That the Court award Plaintiff and the Class the costs to investigate and prosecute
9 this lawsuit and reasonable attorneys' fees and expenses as authorized by law;

10 J. That the Court award pre-judgment and post-judgment interest at the legal rate;
11 and

12 K. That the Court enter an order affording such other and further legal and equitable
13 relief as this Court may deem just and proper.

14 **IX. JURY DEMAND**

15 Plaintiff demands a trial by jury on all causes of action so triable.

16 Dated: February 13, 2015 /s/ *Michael P. Lehmann*
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